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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,927	09/24/2003	Kingsley Richard Chin	KC-104	4638
27769	7590	04/04/2007		
AKC PATENTS 215 GROVE ST. NEWTON, MA 02466			EXAMINER STOKES, CANDICE CAPRI	
			ART UNIT	PAPER NUMBER
			3732	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/669,927

Applicant(s)

KINGSLEY RICHARD CHIN

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,12-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 2,9-11 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-8,12-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goble et al (USPN 6,565,605). Goble et al discloses an orthopedic implantable device articulately connecting a first spinal vertebra to an adjacent second spinal vertebra comprising: a first component (75) adapted to be attached to locations left and right of a midline of said first vertebra, respectively (by way of fasteners 80); a second component (85) adapted to be attached to locations left and right of a midline of said second vertebra, respectively (by way of fasteners 90); and wherein said first component comprises a body (see Figure 2) and a male articulation member (see Figure below) attached to said first component body and said second components comprises a body and a female articulation member (which receives the male articulation member) attached to said second component body and wherein said first components are articulately connected to said second components by engaging said male articulation members to said female articulation members, thereby articulately connecting said first vertebra to said second vertebra along lines left and right of said midlines, respectively. To claims 3 and 4, each of the first and second components (75,85) each has male and female articulation members as shown in the figure below. Regarding claim 5, Goble et al disclose that the prostheses or components (75,85) are superior and inferior facet prostheses. As to claim 6, Goble et al teaches

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the first component (75) is attached to first and second pedicles of the first vertebra and the second component (85) is attached to first and second pedicles of the second vertebra, respectively (see col. 4, lines 63-64 & col. 5, lines 21-22). With respect to claim 7, the first and second components (75,85) are attached to the vertebrae with screws (80,90). To claim 8, the first and second components (75,85) are connected via a connection that acts as a hinge during movement of the vertebra. As to claim 12, the implantable device is made of metal. Regarding claims 13 and 14, Goble et al teach the method of installing the first and second components via screws. Goble et al disclose the claimed invention except for the implantable device comprising a pair of first and second components. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an additional first and second component thus providing a pair of each component, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

To claim 16, Goble et al disclose the claimed invention except for the first and second vertebrae are selected from a group consisting of cervical, thoracic, lumbar and sacrum vertebrae. It would have been an obvious matter of design choice to use the invention as disclosed by Goble et al on any of the vertebrae listed above, since applicant has not disclosed that use of the invention on any of the vertebrae as opposed to the others solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well if used on any vertebrae.

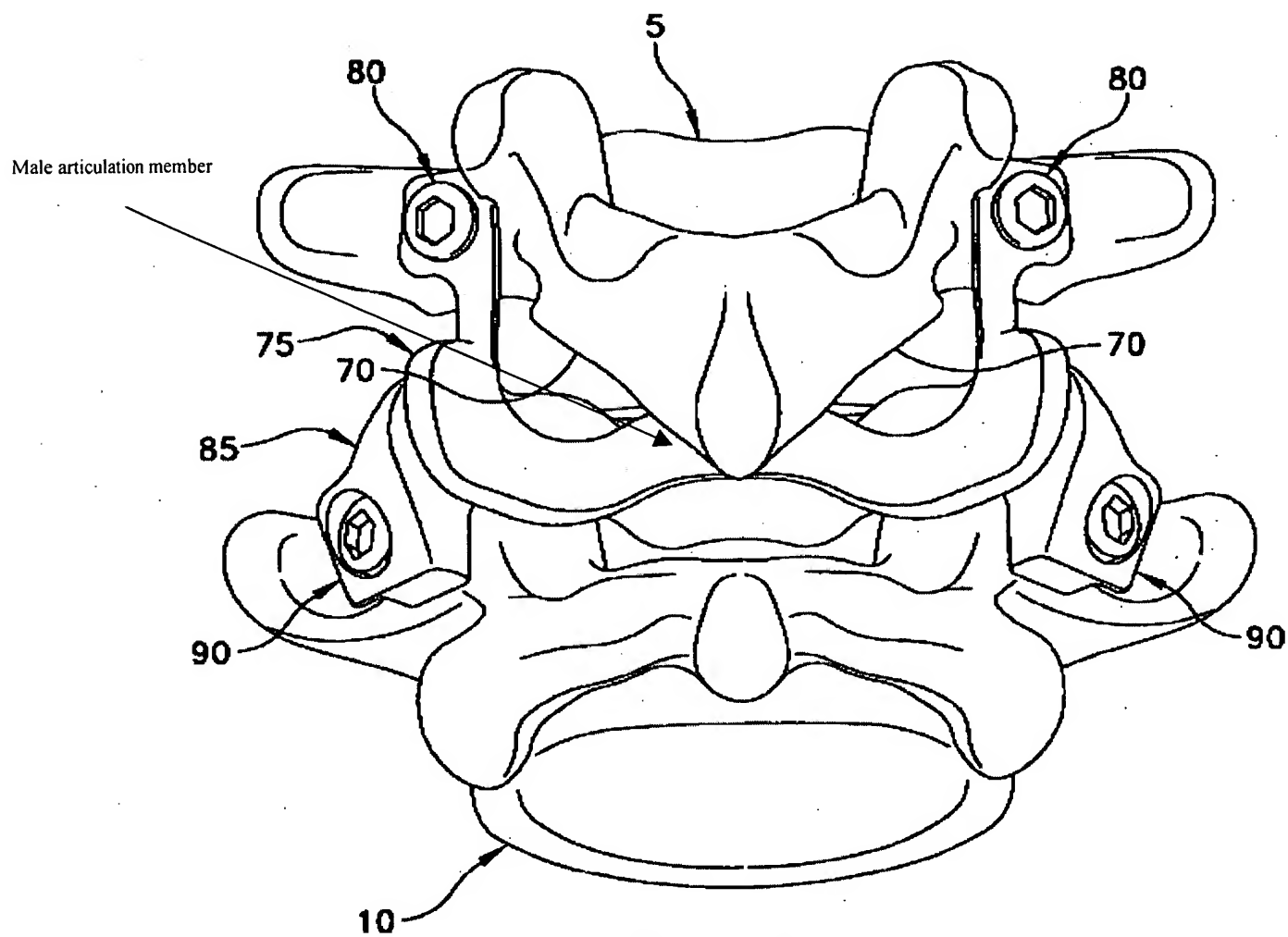


FIG. 2

Allowable Subject Matter

Claims 2,9-11, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or reasonably teach a male articulation comprising a hook in

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combination with the limitations of claim 1. The prior also fails to disclose or reasonably teach the first and second components of the implantable device having an adjustable length in combination with the limitations of claim 1 or claim 14. There is also no prior art teaching of the female articulation members formed within the second component bodies and comprise a bar connecting opposite sides of a cavity formed within a surface of the body.

Response to Arguments

Applicant's arguments filed 01/05/07 have been fully considered but they are not persuasive. Applicant's submit that Goble et al provides one-piece first and second components and the present invention discloses the use of separate pairs of first and second components to allow for inexpensive manufacturing. It is the position of the Office that the one-piece first and second components as recited in the claims are taught by the Goble et al reference and the duplicating each component would have been obvious to one of ordinary skill in the art. Other arguments cited in the Remarks section have not been supported by the claim language and therefore have not been given any patentable weight. Therefore, claims 1,3-8,12-14, and 16 remain rejected and the objection to dependent claims 2,9-11, and 15 is upheld.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached between 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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